



**Modernising the Telecommunications Industry Ombudsman
Terms of Reference
July 2020**

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PublicConsultation@tio.com.au

Financial Counselling Australia (FCA) is the peak body
for financial counsellors in Australia.

About Financial Counselling Australia

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia. We support financial counsellors and provide a voice on national issues. We also advocate on behalf of the clients of financial counsellors for a fairer marketplace.

What Financial Counsellors Do

Financial counsellors provide information and advice to people experiencing financial difficulty. Working in community organisations, their services are free, independent and confidential. Financial counsellors are required to hold, or to obtain, a Diploma in Financial Counselling. They need knowledge of a wide range of areas of law and policy, including consumer credit law, debt enforcement practices, bankruptcy, industry hardship policies and government concession frameworks.

Financial counsellors also document their experiences and highlight issues that have a negative impact on their clients. Either individually, or through FCA, they consult with industry, government and other stakeholders and to encourage practices that prevent financial and consumer problems in the first place.

The main causes of financial difficulty are unemployment, illness and relationship breakdown. Financial counsellors also assist many people trying to make ends meet on very low incomes.

About the Small Business Bushfire Financial Counselling Support Line

On 20th January 2020, in response to the bushfires that caused widespread devastation to communities all along the eastern seaboard and into South Australia, the Federal Government announced a suite of measures to support small businesses.

These measures included \$3.5 million to establish the Small Business Bushfire Financial Counselling Support Line (Small Business Support Line). On 18th March, the Support Line and accompanying [website](#) was [launched](#). The Support Line is operated by FCA.

FCA has long advocated for dedicated financial counselling support for small business owners, modelled along the lines of the United Kingdom's [Business Debtline](#), which has offered a similar service for many years.

About this submission

FCA's submission is limited to the consideration of proposed changes to jurisdiction, specifically the inclusion of a new small business definition.

Financial counsellors are increasingly supporting small business clients. During June 2020 FCA and the Small Business Support Line ran a series of small business webinars for the broader financial counselling community around Australia. A poll from over 200 financial counsellors in attendance highlighted a growing trend of entwining personal and business debt, with 42% reporting this was a common issue. 85% of financial counsellors reported having a client (individual) present with a small business issue in the last three months (72% within the last two months).

NEW SMALL BUSINESS DEFINITION (Question 1)

Question for consultation: Is the proposal to link the small business definition to the Australian Consumer Law the most appropriate test to use, or is there a better definition? What else should we consider when deciding whether a small business consumer is eligible to access our scheme?

The TIO's Terms of Reference, approved on 12 November 2019, do not define small business. Rather the definition of consumer includes "a person or business who is the end-user of a telecommunications service". A business is not defined.

The discussion paper acknowledges there are numerous definitions of small business and that the TIO's current approach is to include small businesses with no more than 20 full time employees and up to \$3 million annual turnover.

We support the inclusion of an explicit definition of small business into the terms of reference. This would provide clarity about small business eligibility for access to the dispute resolution services of the TIO. Clarity is important for small businesses seeking assistance to resolve disputes either directly, or with the support of a financial counsellor. Clarity provides confidence in knowing access is possible, or it provides a clear explanation of why access is not possible.

However, we do not support linking the small business definition to the definition used for unfair contract term protections in the Australian Consumer Law, defining small business as having up to 20 employees.

We do support a definition based on the number of employees. This type of definition is simple to understand and apply for both small businesses, providers and the TIO. The inclusion of additional criteria such as turnover creates complexity which in turn creates communication challenges hindering the ability of people to self assess their eligibility. This creates complexity and additional work for the TIO in assessing eligibility.

We consider the definition of small business should be defined to include a business with fewer than 100 employees.

Fewer than 100 employees would provide consistency of access to redress services available through both the Australian Financial Complaints Authority (AFCA) and the Australian Small Business and Family Enterprise Ombudsman.

The Australian Financial Complaints Authority (AFCA) defines a small business to be one with less than 100 employees:

AFCA Scheme Rules 25 April 2020, Section E Defined Terms

Small Business means a Primary Producer or other business that had less than 100 employees at the time of the act or omission by the Financial Firm that gave rise to the complaint.

The Australian Small Business and Family Enterprise Ombudsman Act 2015 defines a small business as one with fewer than 100 Employees:

5 Meaning of *small business*

- (1) A business is a ***small business*** at a particular time in a financial year (the ***current year***) if:
 - (a) it has fewer than 100 employees at that time; or
 - (b) either:
 - (i) its revenue for the previous financial year is \$5,000,000 or less; or
 - (ii) if there was no time in the previous financial year when the business was carried on—its revenue for the current year is \$5,000,000 or less.
- (2) For the purposes of this section, business includes an enterprise, activity, project, undertaking or arrangement.
- (3) In counting employees for the purposes of the definition of ***small business*** in subsection (1), take part-time employees into account as an appropriate fraction of a full-time equivalent.
- (4) Revenue is to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time.

A definition of less than 100 employees is also consistent with the ability for small business owners to access the support of a financial counsellor. ASIC recently amended the exemption applying to financial counselling agencies that allows financial counsellors to provide limited forms of financial advice (the exemption from holding an Australian Financial Services Licence under the Corporations Act). To remove doubt, the exemption now includes advice to small business, where a small business is defined as having less than 100 employees.¹

¹ See ASIC Legislative Instrument 2017/792 which was amended by ASIC Corporations (Amendment) 2020/635.

Financial counsellors will work with small business clients to resolve issues with telecommunication providers, including the implementation of hardship payment arrangements and dispute resolution. The Small Business Support Line scope of service is defined to include Australian small businesses with less than 100 employees.

FCA therefore supports a definition of small business aligned to the AFCA definition: a business with less than 100 employees.

FCA acknowledges the TIO's desire to have a definition which will automatically adjust, however, this means the terms of reference to be cannot be read as a standalone document. Small business owners and operators are individuals and at the time of lodging a complaint they are often distressed. Simplicity, clarity and transparency are important attributes to support ease of communication and understanding. 'Less than 100 employees' is transparent and easy to understand, 'the maximum number of full time employees a small business may have to be eligible for protection against unfair contract terms in the Australian Consumer Law' is not.

CONCLUSION:

FCA supports:

- **The inclusion of a small business definition**
- **Defining small business as one with less than 100 employees**